

John Weiss

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1 (Thereupon Weiss Exhibit 1 was marked.)

2 BY MS. MADISON:

3 Q. I'll just give you a couple minutes to  
4 look that over.

5 A. Thank you. Okay.

6 Q. Dr. Weiss, do you recognize this  
7 document that's been marked as Exhibit 1?

8 A. Yes, I do.

9 Q. Is that your signature on the bottom  
10 left of the document?

11 A. Yes.

12 Q. Did you create this document?

13 A. Yes, I did.

14 Q. You've had a moment to read through the  
15 document. Do you recall the incident that this  
16 letter is discussing?

17 A. Yeah, I do. I do remember -- I do  
18 remember this.

19 Q. Okay. In the letter it states that  
20 Dr. Borders was absent from morning report on  
21 July 23rd, 2008; is that correct?

22 A. That is correct.

23 Q. Okay. And how did you learn about  
24 Dr. Borders' absence on that date?

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1           A. Many times we have a senior resident or  
2 a chief resident take attendance to conferences.  
3 And in this case the chief resident is Bhavesh  
4 Patel, Dr. Patel. Dr. Patel reported to me that  
5 Dr. Borders was not at morning report.

6           Q. Okay. In this letter it also states  
7 that Dr. Borders reported that he contacted Kelly  
8 McElravey, I'm not sure if I'm saying that  
9 correctly, who was the program administrator for  
10 the Internal Medicine Residency, to inform her of  
11 his absence on July 23rd of 2008; is that  
12 correct?

13           A. That is correct, yes.

14           Q. And did you speak with Ms. McElravey  
15 about the conversation that Dr. Borders said he  
16 had with her about his absence?

17           A. Yes, I did.

18           Q. And what did Ms. McElravey state in that  
19 meeting or discussion that you had with her?

20           A. That she had no documentation that  
21 Dr. Borders was not going to be attending that  
22 conference. He did not report to her that he was  
23 going to be taking time off of that conference.

24           Q. Okay. Now, you said she said that she

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1 had no documentation. Did she also say that she  
2 did not speak with Dr. Borders or just that she  
3 did not document?

4 A. She did not speak with Dr. Borders.

5 Q. Okay. Based on the conversation that  
6 you had with Ms. McElravey, when she said that  
7 she did not speak to Dr. Borders as he had said,  
8 what did you conclude about Dr. Borders'  
9 statement that he had spoken to her and informed  
10 her of his absence?

11 A. That he was not telling the truth.

12 Q. After you concluded that Dr. Borders was  
13 not telling the truth about that statement, what  
14 actions did you take with regard to  
15 Dr. Borders?

16 A. He ultimately received this letter that  
17 it's essential that for any absence that you need  
18 to report this absence to the program director,  
19 because if a resident or any employee, any  
20 associate of Mount Carmel, is going to take time  
21 off, you have to notify, in this case, me or  
22 Kelly McElravey that you're going to utilize  
23 personal leave time.

24 Q. Okay. Were there any other

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1       repercussions to Dr. Borders in relation to this  
2       particular incident, aside from I know you said  
3       he got this letter?

4           A. I sat him down and handed him this  
5       letter. Any time I hand somebody a letter, I  
6       make sure that I read that letter to them and I  
7       ask them if they understand this letter.

8           Q. And who made the decision regarding what  
9       actions were taken with Dr. Borders after this  
10      incident occurred?

11           A. I did.

12           Q. Did you consider Dr. Borders  
13      untrustworthy after this incident?

14           A. No, not untrustworthy, because I've had  
15      other residents before that have not come to  
16      morning conference, and I've had other residents  
17      in the past tell me why they've not come there or  
18      tell me that they let somebody know.

19           And then after I've just dug a little  
20      bit deeper, I found out that they got caught. So  
21      sometimes when they get caught, people will say  
22      things.

23           Q. Okay.

24           A. But I wanted to make sure it was

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1 documented, so if this was repeated behavior,  
2 then I'd have to do something.

3 Q. Right. I understand.

4 (Thereupon Weiss Exhibit 2 was marked.)

5 A. Okay, I've read this.

6 Q. Do you recognize this document that  
7 you've been handed?

8 A. Yes, I do.

9 Q. And is that your signature on the bottom  
10 left of this document?

11 A. Yes, ma'am, it is.

12 Q. And did you also create this document?

13 A. Yes, I did.

14 Q. Do you recall the incident that this  
15 letter is discussing?

16 A. Yes, I do.

17 Q. In this letter it states that  
18 Dr. Borders was not available for rounds on, I  
19 believe, the morning that the letter was written  
20 on -- or on December 8th of 2009. I apologize.  
21 And when you contacted him, he reported that he  
22 was meeting with the State Medical Board; is that  
23 correct?

24 A. That is correct.

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1 (Thereupon Weiss Exhibit 3 was marked.)

2 BY MS. MADISON:

3 Q. You were just handed what I believe has  
4 been marked as Exhibit 3. I'll give you a moment  
5 to look over that document as well.

6 A. I may need a little more time.

7 Q. Yes. I'm really just going to be  
8 focusing on the three paragraphs in the middle of  
9 the first page, the first one starting with  
10 12/09/09 down to the one that says 12/08/09.

11 A. Okay.

12 Q. So you won't really have to focus on the  
13 whole thing.

14 A. Okay.

15 Q. Dr. Weiss, are you familiar with this  
16 document?

17 A. Yeah, I'm familiar with this document.

18 Q. Okay. Did you create this document?

19 A. I believe I did.

20 Q. Okay. Do you recall the incident  
21 discussed in those three paragraphs?

22 I think they're the fourth, fifth, and  
23 six paragraphs, the first one starting with  
24 12/09/09.

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1           And I think it's in reverse  
2 chronological order, so it's a little bit  
3 confusing to read it unless you read it in the  
4 other direction.

5           Are you familiar with the incidents that  
6 are discussed in those three paragraphs sort of  
7 in the middle of the page there?

8           A. I'm going to start with 12/09/09 first,  
9 and then kind of identify, if I may.

10           Q. Sure.

11           A. So, yes, 12/09/09, yes.

12           12/08/09, yes.

13           There's another one dated 12/08/09, yes.

14           Q. Do these paragraphs reference the same  
15 incident discussed in your letter dated 12/09/09  
16 that was marked as Exhibit 2?

17           A. Yes, they do.

18           Q. Okay. Did you discuss this incident  
19 with someone in the HR department, if you  
20 recall?

21           A. I don't remember if I discussed this  
22 specific issue with HR.

23           Q. Okay.

24           A. I don't recall.

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1           Q. In this little chronology it states that  
2           Dr. Borders stated that he had been at the State  
3           Medical Board all day on December 8th, 2009; is  
4           that correct?

5           A. That's correct.

6           Q. Did you speak with anyone at the State  
7           Medical Board about whether Dr. Borders had been  
8           there all day on December 8th, 2009, as he had  
9           stated?

10          A. Yeah. Generally my contact at the Board  
11         at that time was Jeff Bradford, so I recall  
12         asking Jeff if he, if Dr. Borders, had been  
13         there. And Jeff had said -- shared with me that  
14         he had not signed in at the Licensing Board.

15          Q. Okay.

16          A. He had not signed in at the Licensing  
17         Board.

18          Q. Looking back at Exhibit 2, the letter,  
19         in that middle paragraph it talks about you  
20         speaking with Dr. Borders and communicating to  
21         him that there was no record of his presence at  
22         the State Medical Board. And it says at that  
23         time he reported that he was not actually there  
24         but that he spoke to them on the phone. Is that

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1 how you recall?

2 A. Yes.

3 Q. Were you able to confirm that  
4 Dr. Borders' statement about speaking to the  
5 State Medical Board on the phone was truthful?

6 A. I did not get confirmation from anybody  
7 that that was truthful or not.

8 Q. Since your contact, I believe you said  
9 his name was Jeff Bradford, confirmed that  
10 Dr. Borders was not present at the State Medical  
11 Board on December 8th of 2009 as he had reported,  
12 would you say that Dr. Borders' statement about  
13 being at the State Medical Board that day was  
14 truthful?

15 A. No, I -- no, that was not truthful.

16 Although, based on this, I may have  
17 misunderstood on what he said, because what he  
18 clarified later on with me was that he had spoken  
19 with the State Licensing Board of Ohio.

20 Q. Okay. And after this incident occurred,  
21 the absence from rounds and the statement about  
22 being at the Medical Board was investigated and  
23 found that it may not have been truthful, what  
24 actions were taken with regard to Dr. Borders?

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1           A. I spoke with him, you know, and informed  
2           him that tardiness was inappropriate, absences  
3           were inappropriate, non-participation in clinical  
4           or educational activities without approval of me  
5           was unacceptable.

6           Q. Okay. And did you make the decision  
7           regarding what actions were taken with  
8           Dr. Borders at that time?

9           A. Yes.

10          Q. And did you consider Dr. Borders  
11          untrustworthy after this incident?

12          A. Yeah, I was concerned. Yes.

13          Q. What was your concern at that point?

14          A. Was he really telling the truth?

15           Did I truly misinterpret what he said,  
16           or was this a situation where he was caught and  
17           now was just doing anything he could say to  
18           protect himself?

19          Q. Okay.

20           (Thereupon Weiss Exhibit 4 was marked.)

21          A. I am having a rough time reading this.

22          Q. Yeah, it's a little bit -- it's a little  
23           hard to read. I think the more things like this  
24           are copied, they get even worse. I won't ask you

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1 the details about interpreting handwriting.

2 A. Okay.

3 Q. I really only have very few questions on  
4 this exhibit, actually.

5 A. Okay.

6 Q. Are you familiar with this document?

7 A. Not exactly. Although, sometimes --  
8 many times when we go to human resources, there  
9 is documentation in human resources.

10 Q. Okay.

11 A. This may very well be what that is, but  
12 I'm just speculating.

13 Q. Okay.

14 A. I do not recognize the writing.

15 Q. Do you see in the middle where it says  
16 your name?

17 A. Yes, I do.

18 Q. And then can you read what it says right  
19 under your name?

20 A. Yeah. It says "Dr. Weiss." Then  
21 underneath it it says, "May be lying."

22 Q. Do you recall discussing with anyone in  
23 HR the details of the incident that we were  
24 discussing previously about Dr. Weiss (sic)

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1 saying that he was at the State Medical Board and  
2 you confirming that he was not in fact -- or I'm  
3 sorry -- Dr. Borders, and he, not, in fact,  
4 having found to be at the State Medical Board  
5 that day?

6 Let me start over.

7 A. Thank you.

8 Q. Do you recall discussing the incident  
9 where Dr. Borders had claimed to have been at the  
10 State Medical Board with anyone in the HR  
11 department?

12 A. I know many times I had been over to HR  
13 to discuss things regarding Dr. Borders. I don't  
14 recall being over there specifically with this  
15 incident. But if there is documentation I was  
16 there, I must have been there.

17 Q. Okay.

18 A. So, yes.

19 Q. Okay.

20 A. But I don't remember the specifics of  
21 this, being over there.

22 Q. Okay. I understand.

23 Do you recall having a discussion with  
24 anyone about that incident where you stated that

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1 you felt that Dr. Borders may have been lying?

2 A. I don't remember that.

3 Q. Okay. We'll move on from that document.

4 (Thereupon Weiss Exhibit 5 was marked.)

5 A. Okay.

6 Q. Okay. Are you familiar with this  
7 document that's been marked as Exhibit 5?

8 A. Yes.

9 Q. Did you create this document?

10 A. Yes, I did.

11 Q. Okay. And do you recall the incident  
12 that's discussed in the document?

13 A. Yeah, I do.

14 Q. Okay. It looks like it's saying that at  
15 around 10:15 on December 13th of 2009,  
16 Dr. Borders didn't show up for work that morning;  
17 is that correct?

18 A. That is correct.

19 Q. It looks like it also states that around  
20 12:45 that afternoon, Dr. Borders informed you  
21 that he had been in communication with  
22 Dr. Shamitha Francis, Dr. Sana Siddiqui --

23 A. Siddiqui.

24 Q. -- and Dr. Roy St. John regarding the

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1 fact that he was ill; is that also correct?

2 A. That is correct.

3 Q. It looks like the document states that  
4 at around 1:03 that afternoon, you spoke to  
5 Dr. St. John who reported that Dr. Borders did  
6 not contact him and did not report to him that he  
7 was ill.

8 A. That is correct.

9 Q. Since Dr. St. John reported that  
10 Dr. Borders did not contact you and did not  
11 report to him that he was ill, as Dr. Borders  
12 told you he did, would you say that Dr. Borders'  
13 statement was truthful?

14 A. It was not truthful.

15 Q. And after that absence on December 13th  
16 and Dr. Borders' statement that you found not to  
17 be truthful after investigating, what actions  
18 were taken with regard to Dr. Borders?

19 A. I don't remember regarding this  
20 situation.

21 Q. Was Dr. Borders terminated at that  
22 time?

23 A. I know Dr. Borders was ultimately  
24 terminated, but I don't know if this was the

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1 final incident. I don't believe it was.

2 Q. Okay.

3 (Thereupon Weiss Exhibit 6 was marked.)

4 MR. PATMON: What's this exhibit?

5 MS. MADISON: 6.

6 A. Okay. I've read it.

7 Q. Do you recognize this document?

8 A. Yes, I do.

9 Q. And is that your signature on the bottom  
10 left?

11 A. Yes, ma'am.

12 Q. And did you also create this document?

13 A. Yes, I did.

14 Q. Okay. And does this document discuss  
15 the same incident that was discussed in Exhibit 5  
16 that we looked at?

17 A. The one dated December 13th, yes, it  
18 does.

19 Q. I'm sorry.

20 A. Yeah, you're correct, Exhibit 5.

21 Q. Okay. I think it's the second paragraph  
22 in this letter states that because of his  
23 tardiness and non-participation in team  
24 activities, Dr. Borders received an incomplete

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1 for the month of December of 2009?

2 A. That is correct.

3 Q. And that extended his training by one  
4 additional month?

5 A. That is correct.

6 Q. Were there any other repercussions to  
7 Dr. Borders in relation to this incident?

8 A. I don't recall the specifics, but  
9 reading this letter, it looks like he was  
10 supposed to outline some expectations of himself  
11 to ensure his colleagues that he would be holding  
12 himself to the six ACGME competencies.

13 Q. Okay. And did you make the decision  
14 regarding what actions were taken with  
15 Dr. Borders?

16 A. This was made in consultation with my  
17 core faculty --

18 Q. Okay.

19 A. -- because of the fact that his training  
20 would be extended an additional month and we  
21 would be essentially having him receive an  
22 incomplete for the month.

23 Q. Okay. And in your consultation with the  
24 core faculty regarding how you would move forward

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1 with Dr. Borders after this incident, what was  
2 your recommendation?

3 A. My recommendation -- I don't recall my  
4 specific recommendations to the committee. I  
5 don't remember.

6 Q. Do you recall if you recommended  
7 termination for Dr. Borders?

8 A. I don't -- I don't believe I recommended  
9 that.

10 Q. Who made the final decision?

11 A. (No answer given.)

12 Q. If you -- if -- let me rephrase the  
13 question.

14 If you had decided that it was  
15 appropriate to terminate Dr. Borders and other  
16 committee members had a different opinion, who  
17 would have made that final decision?

18 A. Ultimately the final decision is mine.

19 Q. Okay.

20 A. But I will always, in decisions, consult  
21 with my core faculty.

22 Q. And why at that time did you make a  
23 decision not to terminate Dr. Borders?

24 A. I don't remember the specifics on why

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1 that decision was not made.

2 Q. Do you recall why a decision was not  
3 made to terminate Dr. Borders after the December  
4 8th, 2009 incident?

5 That's the one where he had stated that  
6 he was at the State Medical Board.

7 A. That's Exhibit -- that's what Exhibit 2  
8 is referring to; is that correct?

9 Q. Yes.

10 A. Well, the reason I didn't make a  
11 recommendation of termination regarding the  
12 incidents that happened on December 8th of 2009  
13 were because I wasn't 100 percent confident that  
14 maybe I had (sic) misunderstood what Dr. Borders  
15 had said.

16 Q. Okay.

17 A. And that Dr. Borders had communicated to  
18 the Medical Licensing Board but had done that  
19 over the phone.

20 And given the fact that Mr. Bradford  
21 didn't have record that Dr. Borders was there,  
22 maybe there was truth in this.

23 Q. Okay. And why did you not decide to  
24 terminate Dr. Borders after the incident that

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1       happened in July of 2008 where he had stated that  
2       he had spoke with Ms. McElravey and you found  
3       that not to be truthful?

4           A.    Can you repeat that question, please?

5           Q.    Yes.

6               Why did you not decide to terminate  
7       Dr. Borders after the incident that occurred in  
8       July of 2008, and I think it's Exhibit 1 that we  
9       looked at, where he had stated that he had talked  
10      with Ms. McElravey and you found that that was  
11      not truthful?

12           A.    I didn't feel this was a very severe  
13      situation. He missed a -- he missed a morning  
14      report. That, in itself, I didn't feel should be  
15      termination.

16           Q.    Do you feel that your residents not  
17      being truthful when they speak with you is a  
18      serious situation?

19           A.    Yes, I do.

20           Q.    When you spoke with Jeff Bradford at the  
21      State Medical Board and he stated to you that  
22      Dr. Borders had not been at the State Medical  
23      Board that day, did you feel that you may have  
24      misunderstood Mr. Bradford's statements or were

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1 you confident that you understood what he was  
2 saying?

3 A. I was confident what Mr. Bradford was  
4 saying, because, if I recall, there is a sign-in  
5 sheet at the State Licensing Board, and  
6 Mr. Bradford had access to that sign-in sheet and  
7 had no evidence that Dr. Borders had signed in at  
8 the State Licensing Board.

9 He went down the list on the phone with  
10 me, not mentioning all the names but said he did  
11 not see where Dr. Borders signed in.

12 Q. After the July 2008 incident and the  
13 December 8th, 2009 incident and the December  
14 13th, 2009 incident, did you consider Dr. Borders  
15 untrustworthy?

16 A. Yes.

17 MS. MADISON: I think I only have a  
18 couple more questions, but I want to just consult  
19 with Mr. Patmon briefly.

20 MR. ARMSTRONG: Sure, absolutely. Want  
21 to take a little break?

22 (Discussion off the record.)

23 BY MS. MADISON:

24 Q. Okay. I have a few more questions.